It is true that in this suit the cause of action arose after the expiration of the prohibited period; but the Court cannot keep in separate and distinct compartments, first the terms of the agreement, and secondly the terms of the notice to quit founded on that agreement, the failure to comply with which gave the plaintiff his cause of action.

It is significant that whereas the test in paragraph (c) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, is the date when the cause of action arose, in paragraph (d) the test is whether the suit concerns any dealing in land which took place during the prohibited period. Once that is established, as it is in this case, paragraph (d) prohibits the Court from hearing and determining the suit.

Accordingly the Court has no jurisdiction to hear and determine the claim set out in paragraph (a) of the plaint in this suit, in view of the provisions of paragraph (d) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946. In coming to this decision I have borne in mind that it is only by express words or by clear implication that the jurisdiction of the Courts can be ousted and the rights of persons taken away or postponed.

As regards the claim for rent at the rate of $65 per month contained in paragraph (b) of the plaint, the question arises whether this claim is barred by paragraph (e) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, because it involves a question relating to Japanese currency.

The agreement of the 1st day of June, 1942, was made during the Japanese occupation, and the rental stipulated therein i.e. $50 per month must be in the currency in circulation at the time, which was Japanese dollars. The claim for rental contained in paragraph (b) of the plaint is made in currency issued by the Board of Commissioners of Currency, Malaya, which is currency usually referred to as "Straits Settlements dollars".

In paragraph 8 of the plaint it is admitted that the defendant is paying, and the plaintiff is receiving, rent at $65 Straits Settlements dollars per month, and therefore paragraph (e) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, need not be considered. Paragraph (b) of the plaint is a claim consequential to the claim in paragraph (a) of the plaint, and since I have ruled that the claim in this latter paragraph is barred, the claim in the former paragraph need not be considered further.

There will be an order on this application that the plaint in this suit be struck out with costs of the application to the applicant on the notice dated the 7th September, 1946.

The plaintiff will be at liberty, if he so desires, to bring a fresh action.

Order Accordingly.

MOHAMED DIN v. SOCKALINGAM CHETTIAR.

[App. Civil Juris. (Evans, J.) September 27, 1946]

Landlord and tenant — Monthly tenancy — What is sufficient notice to terminate a monthly tenancy — Land Code, Section 120 (c) — Civil Procedure Code S. 504.

The appellant in this case was the tenant of certain premises at 172 Main Road, Taiping, of which the respondent was the landlord. The premises were let on an oral agreement for a tenancy from month to month. It was alleged that the appellant had paid no rent after the 1st January 1946 and the respondent brought his action for recovery of balance of rent due and for an order of ejectment. The appellant admitted the arrears and also admitted receiving a two weeks' notice to pay and to quit the premises. The District Judge gave judgment for the rent claimed and made an order for ejectment. The appellant appealed against the order. It was argued on his behalf that the District Court had no power to make the order as the landlord was not entitled to possession until he had put an end to the tenancy by an effective notice to quit and that the proper notice was a month's notice expiring with a month of the tenancy. The respondent contended that the Common Law applicable in such cases had been modified by the provisions of Section 504 of the Civil Procedure Code and by Section 120 (c) of the Land Code, so that where the rent was 15 days and less than 3 months in arrears an adequate notice sufficed to terminate the tenancy and where the rent was more than 3 months in arrears, as in this case, no notice was necessary but the tenancy was determined and the landlord had an immediate right of re-entry.

Held, (1) that Section 120 (c) of the Land Code had no application to verbal contracts;

(2) that Section 504 of the Civil Procedure Code merely provided that where the rent was unpaid for 15 days the notice need not be given to expire on any particular day and had not otherwise altered the Common Law; and

(3) that the length of reasonable notice in the case of monthly tenancies was a month and as insufficient notice had been given in this case, the tenancy had not been terminated and the Judge had no authority to make the order of ejectment.

Case referred to :—

(1) *Precious v. Reedie* (1942) 2 K.B. 149.

M. S. Mahendran for the appellant.

J. S. Chabra for the respondent.

Evans, J.:—The appellant in this case is the tenant of certain premises at 172 Main Road, Taiping and is at present in jail. The respondent is his landlord. It is alleged in the plaint that the premises were let on "the usual month to month tenancy basis". The allegation is not denied, and the appellant speaks of a monthly tenancy. I therefore understand that there was no lease or agreement in writing, but that the premises were let on an oral agreement for a tenancy from month to month. It is said that the appellant paid no rent after 1.1.46 and the respondent brought his action for recovery of balance of rent due, for an order of ejectment, costs, and any other relief. The appellant admitted the arrears, made some allegations as to tender which are not material to the point before this Court, and also admitted receiving a two weeks' notice now said to be a notice to pay and to quit the premises. The District Judge gave judgment for the rent claimed and made an order for ejectment.

The appellant appeals against the order. He has argued here that the District Court had no power to make such an order as the landlord was not entitled to possession until he had put an end to the tenancy by an effective notice to quit, that the proper notice is a month's notice expiring with a month of the tenancy. He further argued that Section 7 of the Rent and Charged Land (Restriction) Enactment No. 14 of 1940 confers no new rights on a landlord, but simply limits in cases of non-payment of rent the general restraint applied by that Enactment to the powers of the Courts of Law.

The respondent however did not rely on this Section. He contended that the common law applicable in such cases is modified by the provisions of Section 504 of the Civil Procedure Code Cap. 7 and by Section 120 (c) of the Land Code Cap. 138, so that where the rent is 15 days and less than 3 months in arrears an adequate notice suffices to terminate the tenancy and where the rent is more than 3 months in arrears, as here, no notice is necessary but the tenancy is determined and the landlord has an immediate right of re-entry.

The law governing the matter is the English Common Law modified, as may be, by local enactments. The nature of a monthly tenancy under that law is that the tenancy runs for a month but is renewed at the end of each month for another month. It is not a tenancy for a month which would expire at the end of that month but a short term tenancy renewing itself until this virtue of renewal is put an end to by a notice to quit.

Section 120 (c) of the Land Code relied on by the respondent is a provision implying certain terms in a memorandum for a lease. It is a section inserting provisions into a written agreement and simplifies or shortens the drafting of the instrument affected, a memorandum of lease. It has no application to verbal contracts and I cannot read it as intended to modify the parties' rights under the Common Law on such contracts. There is no memorandum of lease here, and it has no application to this case.

Section 504 of the Code of Civil Procedure does not say that a fortnight's notice is sufficient, nor does it provide in any way what notice is sufficient. The law on that point is unaltered. It merely provides that where the rent is unpaid for 15 days the notice need not be given to expire on any particular day. The Common Law has been referred to by the appellant and is only an application of the general rule applicable not only to tenancies but to contracts continuing for an indefinite period. Such contracts continue until they are brought to an end by notice. The parties in written contracts normally introduce a provision as to the notice required but in the absence of such a provision the notice required is a reasonable notice. This according to *Woodfall* (22nd Ed. p. 432) was the law as to monthly tenancies prior to the case of *Precious v. Reedie*[1] on which the appellant relies. In practice a month was always regarded as the reasonable notice, and in the case cited the court required that the reasonable notice in such cases should be one month which must expire with a month of the tenancy, otherwise it would expire in the course of a month's tenancy which had lawfully arisen. I don't think there is any difference between what is reasonable notice and what is contemplated by "sufficient notice". Section 504 of the Procedure Code would overrule that part of the decision in *Precious v. Reedie* which requires the notice to expire with a month of the tenancy, but the length of reasonable notice in such cases is a month. I cannot say 14 days is sufficient in this case. The tenancy therefore had not been terminated, and the Judge had no authority to make the order of ejectment. The judgment given will therefore be amended by quashing the other for ejectment. No such order should issue. The appellant is entitled to the costs of this appeal.

Order Accordingly.